

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<p>----- X</p> <p><b>AMERICAN INSURANCE COMPANY</b> <b>a/s/o Mariah Carey, and Sinclair C.S.</b> <b>Beecham</b></p> <p><b>Plaintiffs,</b> <b>against</b></p> <p><b>CORN ASSOCIATES, LLC, THE</b> <b>FRANKLIN TOWER CONDOMINIUM,</b> <b>KATZ METAL FABRICATORS, INC., and</b> <b>SAMCO PLUMBING, INC.,</b> <b>Defendants.</b></p> <p>----- X</p>	<p><b><u>AFFIDAVIT IN OPPOSITION</u></b></p> <p><b>Docket No.: 1:07 cv 08604</b></p>
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MARK E. OPALISKY, ESQ., an attorney admitted to practice before this Court, being duly sworn, deposes and says:

1. I am counsel for plaintiff, AMERICAN INSURANCE COMPANY, subrogee of Mariah Carey and Sinclair C.S. Beecham. This affidavit and accompanying Memorandum of Law are made in opposition to the Motion to Dismiss of Katz Metal Fabricators, Inc. ("Katz Metal").

2. As grounds for its Motion to Dismiss, Katz Metal alleges that the action was not commenced within the time prescribed, and therefore it is time-barred.

3. The affirmative defense of statute of limitations may be raised in a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Such a motion, however, should not be granted unless it appears beyond doubt that the plaintiff can prove so set of facts in support of his claim which would entitle him to relief.

4. On a Motion to Dismiss, the Court must assume all well-pleaded factual allegations to be true, and view all reasonable inferences that can be drawn from such allegations in the light most favorable to the plaintiff.

5. In this case, there is no dispute that the statute of limitations of the state of New York, set forth CPLR § 214(4), bars claims for property damage caused by negligence after three years.

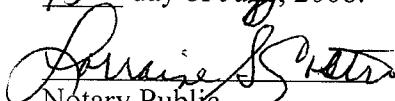
6. The proper accrual date for the statute of limitations in this case is the date of injury, April 2, 2005, when a significant water leak caused damage to plaintiff's subrogees' personal property.

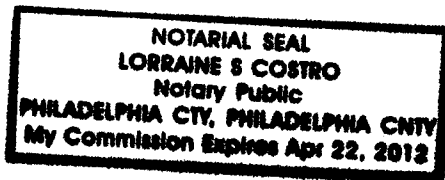
7. As plaintiff filed its original Complaint on October 3, 2007, the action is not time-barred.

8. For the reasons set forth in the accompanying Memorandum of Law, plaintiff respectfully asks this Court to deny the Motion to Dismiss of Katz Metal Fabricators, Inc.

  
MARK E. OPALISKY, ESQ.

Sworn to before me this  
13 day of July, 2008.

  
Notary Public



**CERTIFICATE OF SERVICE**

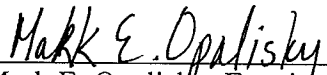
I, Mark E. Opalisky, do hereby certify that a copy of the foregoing Plaintiff's Memorandum of Law in Opposition to the Motion to Dismiss of Katz Metal Fabricators and Affidavit in Opposition has been served upon all parties of record this 15<sup>th</sup> day of July, 2008 by electronic filing:

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Mark E. Opalisky, Esquire